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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION TWO

In re R.G., a Person Coming
Under the Juvenile Court Law.

B288577
(c/w B288582)
(Los Angeles County
Super. Ct. No. DK17226A)

LOS ANGELES COUNTY
DEPARTMENT OF CHILDREN
AND FAMILY SERVICES,

Plaintiff and Respondent,

v.

L.O.,

Defendant and Appellant.

APPEAL from orders of the Superior Court of Los Angeles
County, Marguerite D. Downing, Judge. Affirmed.

Anne E. Fragasso, under appointment by the Court of
Appeal, for Defendant and Appellant.

Mary C. Wickham, County Counsel, Kristine P. Miles,
Assistant County Counsel, David Michael Miller, Deputy County
Counsel, for Plaintiff and Respondent.

L.O. (mother) appeals the denial of her petition filed under Welfare and Institutions Code section 388¹ and the termination of parental rights over her daughter, R.G. (minor).² Mother contends that the juvenile court abused its discretion by denying her petition without an evidentiary hearing. Because mother did not meet her burden of showing changed circumstances or that minor's best interests would be served by granting the petition, we affirm.³

¹ All further statutory references are to the Welfare and Institutions Code unless otherwise indicated.

² Mother filed a separate notice of appeal from each order, and we granted her motion to consolidate the appeals under this case number.

³ Apart from the fact that the termination of parental rights at the section 366.26 hearing followed the allegedly erroneous denial of mother's section 388 petition, mother raises no arguments on appeal as to the order terminating her parental rights. Mother has therefore forfeited any independent challenge to that order. (See *Antounian v. Louis Vuitton Malletier* (2010) 189 Cal.App.4th 438, 455 ["[A]n argument not raised in the opening brief is forfeited on appeal".])

FACTUAL AND PROCEDURAL BACKGROUND

The Referral

Minor came to the attention of the Los Angeles County Department of Children and Family Services (DCFS) in April 2016, when it received a referral alleging general neglect. Mother had taken minor, then five years old, to the emergency room for a cough. At the hospital, mother reported that minor had been sexually abused by minor's stepfather in 2014.⁴ Mother appeared anxious and unfocused; she admitted that she smoked marijuana and drank alcohol but expressed interest in getting sober.

DCFS's Initial Investigation and the Removal Order

A DCFS social worker conducted an unannounced visit at the home of minor's maternal grandmother (grandmother), where mother and minor were then residing. Mother told the social worker that she had drunk alcohol on and off since high school, but that she had stopped drinking about two to three months prior. She admitted to smoking marijuana about a month earlier and using cocaine a "long time ago"; she denied, however, that minor had been with her when she used drugs. When interviewed, minor denied ever being scared of mother, knowing what alcohol and drugs were, or that anyone had ever touched her "private parts."

The social worker spoke with grandmother a few days later. Grandmother reported that mother had a long history of drug addiction. Before mother became pregnant with minor, the family sought help for mother's substance abuse through their

⁴ These sexual abuse allegations were previously investigated, with inconclusive findings. They were not the subject matter of the dependency proceedings.

church's recovery program but mother had not been fully committed. According to grandmother, mother was emotionally unstable. Although mother had "good days" when she was attentive to minor, she also had "bad days" when she would not want to do anything with her.

During the first unannounced visit, mother agreed to submit to a drug test, denying that it would be positive for any drug with the exception of marijuana. The results, however, returned positive for both amphetamines and methamphetamines. When confronted with the positive test results, mother denied smoking methamphetamines but claimed that she had been sitting next to friends while they smoked.

When told that a removal order would be sought for minor, mother alleged that grandmother had mental health problems and would not protect minor from minor's stepfather. Mother did not want minor to stay with grandmother, but she trusted minor's maternal great uncle and his family.

On April 29, 2016, DCFS sought and was granted a removal order based on mother's unresolved substance abuse and her recent positive drug test. Minor was detained and placed in her great uncle's home.

During a telephone call with a DCFS dependency investigator on May 9, 2016, mother exhibited bizarre behavior. When questioned about minor's paternity, mother became angry and asked why minor's stepfather had not been prosecuted for the alleged sexual abuse. A short time later, however, mother stated that she missed minor's stepfather and did not know why he was divorcing her.

The following day, the dependency investigator interviewed grandmother. Grandmother reported that, sometime in April

2016, mother suddenly physically attacked her, leaving a small bruise on her arm. Minor was present in the room during the incident and hid under the table. Grandmother also stated that she had recently found marijuana and what she believed to be crystal meth in the room where mother and minor had slept.

The Dependency Petitions and Detention Hearing

On May 4, 2016, DCFS filed a dependency petition under section 300, subdivision (b)(1), alleging that mother's current use of amphetamines, methamphetamines, and marijuana, coupled with her abuse of alcohol, rendered her incapable of providing regular care to and supervision of minor, thus endangering minor's health and safety.

The detention hearing was held the same day. Mother was present and represented by appointed counsel. Although he did not appear, the juvenile court found N.G. to be minor's presumed father.⁵ The court ordered minor's continued detention, with monitored parental visitation. Mother was ordered to undergo drug testing and warned that, if minor could not be safely returned to her after six months, the court could set a hearing to select a permanent plan, including adoption and, with that, termination of parental rights.

On May 27, 2016, DCFS filed an amended dependency petition under section 300, subdivisions (a) and (b)(1). The amended petition added allegations that mother had physically attacked grandmother in the presence of minor. This conduct endangered minor's physical and emotional health and safety.

⁵ N.G. is not a party to this appeal.

The Joint Jurisdiction and Disposition Hearing

Mother was not present at the joint jurisdiction and disposition hearing held on June 21, 2016. The juvenile court sustained the amended dependency petition and found by clear and convincing evidence that minor's physical health was in substantial danger and/or that minor was suffering severe emotional damage. Minor was declared a dependent of the court and removed from mother's custody. DCFS was ordered to provide family reunification services. Pursuant to the case plan, mother was ordered, inter alia, to cooperate with all mental health counselling referrals and comply with prescribed medication, participate in a full drug/alcohol program with aftercare and random testing, and attend developmentally appropriate parenting classes. Mother's visits with minor were to be monitored.

The Six-Month Status Review and DCFS's Section 388 Petition

In its six-month status review, DCFS reported that minor was living with her great uncle and his wife and was thriving in their care. Minor stated that she loved her monthly visits with grandmother. Both parents' whereabouts were unknown, and they had failed to make themselves available to DCFS and comply with court orders. Although minor had been taken to a DCFS office twice weekly over the course of several months for visitation, mother had missed 51 of these visits. Mother also failed to submit to drug testing on 12 dates. DCFS recommended that family reunification services be terminated.

Mother was not present at the six-month review hearing on December 20, 2016, and the matter was continued.

On January 11, 2017, DCFS filed a petition under section 388 requesting that the juvenile court terminate family reunification services. The petition alleged that neither parent had visited minor for the past six months, they had failed to comply with court orders, and their whereabouts were unknown. Minor's best interests would be served by terminating reunification services because a permanent plan for her could then be initiated—specifically, adoption by minor's great uncle and his wife.

The juvenile court denied the petition because it failed to state new evidence or a change of circumstances. The court nevertheless set a hearing on the petition based on the potential that the requested relief could promote minor's best interests.

Following several continuances, the six-month status review hearing pursuant to section 366.21, subdivision (e), and the hearing on DCFS's section 388 petition took place on March 23, 2017. Mother did not attend.

The juvenile court granted the section 388 petition, terminating reunification services. Pointing to mother's failure to comply with the case plan or participate in visitation with minor, the court found "by clear and convincing evidence that the extent of progress made towards alleviating or mitigating the causes necessitating [minor's] placement in foster care ha[d] been non[-]existent." Finally, the court set a hearing pursuant to section 366.26 to select a permanent plan for minor.

Continuances of the Permanency Planning Hearing

As ordered by the juvenile court, DCFS filed a report on July 18, 2017, in advance of the section 366.26 permanency planning hearing. Although, at the time of the report, minor remained in the care of her great uncle and his wife, she was in

the process of being placed with grandmother. Grandmother had a significant bond with minor and was interested in adopting her. Mother had not been in contact with minor for over a year; DCFS learned that mother had been incarcerated for part of that time. DCFS recommended the termination of parental rights.

The section 366.26 permanency planning hearing was initially set for July 20, 2017. Mother was present on that date, but the juvenile court found that notice had not been proper and continued the hearing. The court authorized DCFS to place minor in grandmother's home, which occurred that same day. Due to several more continuances, the section 366.26 hearing did not take place until March 6, 2018.

Mother's Visitation with Minor

After the May 4, 2016 detention hearing, mother did not have contact with minor until September 21, 2017. Mother visited with minor at the court on September 21, 2017, but she began to yell and act erratically. Minor was terrified and began to exhibit anxious behavior.

Prior to the next monitored visit at a DCFS office on October 10, 2017, minor reported that she was nervous and asked if the visit could be cancelled. After being assured that she would not be alone with mother, minor relaxed and the visit proceeded, with mother acting appropriately.

Mother called a DCFS social worker in early November 2017 to request that minor attend a family member's funeral with her. Mother became agitated when her request was denied and hung up the phone.

Mother visited with minor six times in November and December 2017. Mother acted appropriately at several of these visits, and minor was reportedly very excited to see her.

However, during one visit, the DCFS monitor had to intervene a few times due to mother's use of inappropriate language.

Mother's visits with minor in January 2018 were more problematic. For example, at one visit, mother appeared disheveled and distracted. She was on her cell phone and did not engage appropriately with minor. Mother directed minor's attention to another child that was talking to grandmother outside of the visitation room. Mother told minor, "The little girl is trying to take your grandma from you." Mother also made inappropriate comments at another visit, such as telling minor that they would "both die" if they each ate a "dirty" snack food that had dropped on the floor.

The commencement of mother's visitation with minor coincided with her compliance with aspects of the court-ordered case plan. Mother began residing in a sober living home in early August 2017; according to the program's administrator, mother was compliant with the home's inpatient drug program and had clean drug tests. In August 2017, she also enrolled in a mental health program, meeting monthly with a psychiatrist and twice weekly with a therapist and participating in mental health and substance-recovery groups. Mother also completed a 13-week parenting program.

Mother's Section 388 Petition

On December 1, 2017, mother filed a petition pursuant to section 388, in which she requested the return of minor to her custody or, in the alternative, for reunification services to be reinstated and/or liberalized visitation with minor. Mother also requested that the section 366.26 hearing be taken off calendar or that legal guardianship rather than adoption be selected as the permanent plan for minor.

In support of her petition, mother explained that she had been involved in a Full Service Partnership (FSP)⁶ program since August 2017, residing in a sober living home, and participating in drug counseling and parenting classes. Through counseling, she was “learning to cope and function with [her] daily life not being on drugs” and how to manage her mental health issues. Mother claimed that if she had previously known what she had learned through her parenting classes, she “would have paid more special attention to” minor. She stated that she would “give [her] child the respect of attention she deserves.”

Mother looked forward to her visits with minor, and claimed that she “ha[d] been so consistent with [her] monitored visits since they were granted to [her].” Both mother and minor were saddened when their monitored visits ended. Mother wrote that minor was “including” her because minor “want[ed mother] to be part of her life and childhood.” For this reason, minor “need[ed]” mother instead of adoption.

DCFS recommended the denial of mother’s section 388 petition. It cited mother’s “extensive criminal history related to substance abuse issues,” frequent erratic behavior, and agitation over minor issues. DCFS’s primary concern, however, was that—until only recently—mother had not had any contact with minor for over a year. According to DCFS, minor exhibited anxiety after her visits with mother and had nightmares about when she

⁶ An FSP is defined as “the collaborative relationship between the County and the client, and when appropriate the client’s family, through which the County plans for and provides the full spectrum of community services so that the client can achieve the identified goals.” (Cal. Code Regs., tit. 9, § 3200.130.)

was in her mother's care. Minor was reportedly doing well in grandmother's home and wanted to remain in her care.

The juvenile court ordered a hearing on whether a full evidentiary hearing should take place regarding mother's petition. It was at this hearing on January 29, 2018, that the court denied the petition—without holding an evidentiary hearing—on the ground that mother had not stated new evidence or a change of circumstances.

The Termination of Parental Rights

The section 366.26 permanency planning hearing took place on March 6, 2018. The juvenile court found that minor was adoptable, that no exception to adoption applied, that it would be in minor's best interest to be adopted, and that it would be detrimental to return minor to her parents' custody. The court terminated parental rights and designated grandmother as the prospective adoptive parent.

Mother's timely appeal followed.

DISCUSSION

The only issue raised by mother on appeal is whether the juvenile court abused its discretion by denying her section 388 petition without an evidentiary hearing.

I. Standard of Review and Relevant Law

Under section 388, subdivision (a)(1), a parent or other interested party may petition the juvenile court to change, modify, or set aside a previous order in dependency proceedings. To be entitled to a full evidentiary hearing on the petition, the parent must make a prima facie showing of a change in circumstances or new evidence *and* that the child's best interests will be promoted by granting the petition. (*In re Alayah J.* (2017) 9 Cal.App.5th 469, 478.) "The petition must be liberally

construed in favor of its sufficiency.” (*In re Jasmon O.* (1994) 8 Cal.4th 398, 415 (*Jasmon O.*))

The summary denial of a section 388 petition without a hearing is reviewed for abuse of discretion. (*In re Angel B.* (2002) 97 Cal.App.4th 454, 460 (*Angel B.*); see also *In re Jamika W.* (1997) 54 Cal.App.4th 1446, 1451.) Thus, we must affirm “unless the [juvenile] court exceeded the limits of legal discretion by making an arbitrary, capricious or patently absurd determination.” (*In re A.S.* (2009) 180 Cal.App.4th 351, 358 (*A.S.*))

II. Mother Did Not Make a Prima Facie Showing of Changed Circumstances

Mother argues that her new commitment to sobriety and participation in a variety of programs, such as drug counseling and parenting classes, constituted changed circumstances and entitled her to hearing on her section 388 petition. We conclude that the juvenile court did not abuse its discretion by finding that mother’s petition had not stated new evidence or a change of circumstances and denying it without a hearing.

“To support a section 388 petition, the change in circumstances must be substantial.” (*In re Ernesto R.* (2014) 230 Cal.App.4th 219, 223 (*Ernesto R.*)) A mere showing of *changing* circumstances is insufficient. (*A.S., supra*, 180 Cal.App.4th at p. 358.) Thus, a parent’s relatively recent efforts to achieve or maintain sobriety, following a long history of substance abuse, is generally not sufficient to establish changed circumstances. (See, e.g., *Ernesto R., supra*, 230 Cal.App.4th at p. 223 [mother’s completion of a drug treatment program was not a substantial change of circumstances given her history of drug relapses]; *In re Marcelo B.* (2012) 209 Cal.App.4th 635, 642 [father’s efforts

including completing a substance abuse program and attending parenting classes “were not prima facie evidence of a change in circumstances” in light of his previous extensive treatment and history of relapses].)

Mother’s petition did not make the necessary prima facie showing of changed circumstances to trigger a full evidentiary hearing. That mother had been residing in a sober living home for four months, visiting minor regularly for two months, attending drug counseling and parenting classes, and obtaining mental health treatment were evidence of *changing*—as opposed to *changed*—circumstances in mother’s life. Given mother’s extensive history of substance-abuse problems and her failure to have any contact with minor for over a year (including during the entirety of the family reunification period), her petition only demonstrated that mother was beginning a process that may have eventually led to changed circumstances. But “[c]hildhood does not wait for the parent to become adequate.” (*In re Marilyn H.* (1993) 5 Cal.4th 295, 310 (*Marilyn H.*).)

The recency of mother’s efforts distinguishes the facts alleged in the petition from those in cases where a parent’s period of sobriety and completion of classes were held sufficient to make a prima facie showing of changed circumstances.

For example, in *In re Aljamie D.* (2000) 84 Cal.App.4th 424 (*Aljamie D.*), the mother “had completed numerous educational programs and parenting classes, . . . had tested clean in weekly random drug tests for over *two years* . . . [and] had visited consistently with the children and continued to have a strongly bonded relationship with them.” (*Id.* at p. 432, italics added.) And in *In re Hashem H.* (1996) 45 Cal.App.4th 1791 (*Hashem H.*), the mother’s section 388 petition alleged “her continuous

participation in individual therapy for *more than 18 months* which was so successful that her therapist recommended [her son] be returned to her custody,” her “regular and consistent visitation with her son for *more than a year*, her participation in conjoint counseling with him, her stable employment and religious affiliation, and her current ability to provide a home for [her son] on a full-time basis.” (*Id.* at p. 1799, italics added.) The allegations in each of these cases—sustained for significantly longer periods than that alleged here by mother—constituted prima facie showings of changed circumstances. (*Aljamie D.*, *supra*, 84 Cal.App.4th at p. 432; *Hashem H.*, *supra*, at p. 1799.)

Here we cannot say that the juvenile court’s conclusion that mother’s petition failed to state new evidence or a change of circumstances was “an arbitrary, capricious or patently absurd determination.” (*A.S.*, *supra*, 180 Cal.App.4th at p. 358.) Accordingly, the court did not abuse its discretion.

III. Mother Did Not Make a Prima Facie Showing That Granting the Petition Was in Minor’s Best Interests

A successful section 388 petition “must . . . describe specifically how the petition will advance the child’s best interests.” (*In re G.B.* (2014) 227 Cal.App.4th 1147, 1157.) “[A] primary consideration in determining the child’s best interest is the goal of assuring stability and continuity.” (*Angel B.*, *supra*, 97 Cal.App.4th at p. 464.) And once family reunification services are terminated, the child’s need for permanency and stability take precedence over the parent’s interest in reunification. (See *Marilyn H.*, *supra*, 5 Cal.4th at pp. 309–310.)

Here, mother’s petition was filed more than eight months after the termination of family reunification services. The petition did not describe how the various relief sought by

mother—returning minor to mother’s custody, reinstating reunification services, liberalizing visitation, taking the section 366.26 hearing off calendar, or selecting legal guardianship over adoption—would benefit minor and outweigh her “constitutional and statutory interest in stability” (*Jasmon O.*, *supra*, 8 Cal.4th at p. 421) and permanency. Mother’s belief that minor wanted mother “to be part of her life and childhood” was insufficient to make a *prima facie* showing.

We, therefore, find no abuse of discretion in the juvenile court’s summary denial of mother’s petition.

DISPOSITION

The order denying mother’s section 388 petition is affirmed. As mother has provided no independent basis to reverse the order terminating parental rights, that order is also affirmed.

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_____, J.
ASHMANN-GERST

We concur:

_____, P. J.
LUI

_____, J.
CHAVEZ